



**MINISTER
ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 164523

APPEAL DECISION

**APPEAL BY BONAIRE PROJECTS (PTY) LTD AGAINST THE ENVIRONMENTAL
AUTHORISATION ISSUED FOR THE PROPOSED SURFACE WATER
DEVELOPMENTS FOR AUGMENTATION OF THE WESTERN CAPE WATER SUPPLY
SYSTEM IN THE WESTERN CAPE PROVINCE**

1. INTRODUCTION

In terms of Regulation 25 of the Environmental Impact Assessment Regulations, 2014, published by Government Notice (GN) No. 38282 of 4 December 2014 (2014 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Chief Director: Integrated Environmental Authorisations of the Department of Environmental Affairs (the Department) granted Environmental Authorisation (EA) to the Department of Water and Sanitation (the applicant) on 20 June 2017 for the proposed surface water developments for augmentation of the Western Cape Water Supply System in the Western Cape Province.

2. BACKGROUND AND APPEAL

- 2.1 In September 2016, the applicant lodged an application for the proposed surface water developments for augmentation of the Western Cape water supply system, Western Cape Province.
- 2.2 The applicant commissioned an independent Environmental Assessment Consultancy, namely NEMA Consulting, to conduct an Environmental Impact Assessment (EIA) for the above-mentioned application. The final Environmental Impact Report (FEIR) was received by the Department on 18 April 2017.
- 2.3 The Department was thereafter satisfied that the applicant complied with the minimum requirements formulated in the 2014 EIA Regulations and that the FEIR was adequate to assess the impacts associated with the proposed project. As a result thereof, the Department granted an EA to the applicant on 20 June 2017 for proposed Western Cape water supply system.
- 2.4 Following the issuance of the aforementioned EA, the Directorate: Appeals and Legal Review received an appeal from Werksmans Attorneys Inc, on behalf of Bonaire Projects (Pty) Ltd (the appellant) on 11 July 2017. The applicant provided its response and the Department provided comment thereon on 27 July 2017.
- 2.5 Considering that the essence of the appeal related to the proposed water pipeline resulting in a loss of a portion of the appellant's orchard and impacting on the appellant's farming operations, the Directorate: Appeals and Legal Review met with the applicant and appellant on 13 November 2017 in order to discuss possible mitigation measures. At the said meeting, it was agreed that the applicant will investigate the option of placing the proposed water pipeline within the existing canal servitude which runs adjacent to the appellant's property.
- 2.6 On 22 December 2017, the applicant submitted a report on the canal servitude investigation to the Directorate: Appeals and Legal Review.

3. DECISION

- 3.1 In reaching my decision on the appeal against the aforementioned EA, I have taken the following into consideration:
- 3.1.1 Relevant material information contained in the project file (14/12/16/3/3/2/973);
 - 3.1.2 The appellant's grounds of appeal, received on 11 July 2017;
 - 3.1.3 The applicant's response to the appeal, received on 27 July 2017
 - 3.1.4 The comments received on the appeal from the Department, received on 27 July 2017;
 - 3.1.5 The outcome of the meeting held with the applicant and appellant on 13 November 2017;
 - 3.1.6 The minutes of a meeting held between the applicant and appellant on 21 December 2017;
 - 3.1.7 The report on the canal servitude investigation submitted by the applicant on 22 December 2017, and
 - 3.1.8 The proposed amendments to the EA submitted by the applicant on 15 February 2018.
- 3.2 In terms of section 43 (6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, or condition of the Department, or to make any other appropriate decision.
- 3.3 Having considered the above mentioned information, and in terms of section 43(6) of NEMA, I have decided to uphold the appeal and vary the EA as per 4.6 below.
- 3.4 Due to the nature of the decision, I have therefore deemed it unnecessary to make a particular ruling on each of the grounds of appeal raised by the appellant. However, it should be noted that where a particular statement is not directly addressed, the absence of any response should not be interpreted to mean that I agree with or abide by the statement made.
- 3.5 Furthermore, should any party be dissatisfied with any aspect of my decision, it may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

4. THE REASONS FOR MY DECISION ARE AS FOLLOWS:

- 4.1 The appellant concurs that the augmentation of the Western Cape's water supply is necessary but contends that the location of the pipeline and associated infrastructure is undesirable. The appellant's main concern at the approved location is the impact of the pipeline and associated infrastructure on its water supply and agricultural activities. In this regard, the appellant contends that once the pipeline is in place, the wetland will no longer be fed through the canal and the run-off from the wetland system will no longer feed its dam resulting in less water for irrigation. The appellant further contends that the pipeline will result in the loss of a portion of its orchard and will also impact on farming operations during the construction and operational phases.
- 4.2 In response to the appeal by the appellant, the applicant states that the impacts associated with the proposed project were adequately assessed and recorded in the FEIR and that appropriate mitigation measures were proposed. The applicant states further that the final pipeline alignment will be designed so as to avoid damage to existing infrastructure and that construction will be geared towards minimising disruptions to the farming operations in the area. Nevertheless, the applicant agreed, at the meeting held on 13 November 2017, to investigate the option of placing the proposed pipeline within the existing canal servitude which runs adjacent to the appellant's property. The appellant stated at the said meeting that its concern will be alleviated should the proposed pipeline be placed within the existing canal servitude.
- 4.3 As a result thereof, the applicant appointed engineers to investigate the extent of the registered servitude for the canal and to assess whether the pipeline can be placed within the canal servitude and thus avoid the appellant's property.
- 4.4 In evaluating the appeal, the response thereto, as well as the report by the engineer, I note that the engineer confirmed that the majority of the canal is within a servitude registered in favour of the applicant but that there are portions of the canal where information regarding the registered servitude could not be obtained.

- 4.5 I note, however, that the applicant has undertaken to investigate the full extent of the canal servitude and adjacent properties within the detailed design phase of the project. I note that the applicant has further undertaken to register the portions of the servitude which are not registered prior to the commencement of construction and to pay any compensation, where applicable.
- 4.6 In addition to the above, I have taken note that the outcomes of the appeal process and the negotiations between the appellant and the applicant necessitates that I make certain amendments to the EA.
- 4.7 As a result of the foregoing, the EA is hereby amended as follows
- 4.7.1 On page 3 of the EA, GN R. 983 Item 9, under the first column titled "Activity/Project description" the following two sentences:

"The pipeline will be between 5000 and 8115m in length and will have a diameter of 1.7m. The servitude for the pipeline will be 50m (25m on either side) during construction"

are replaced as follows:

"The proposed water transfer pipeline will be approximately 6.3km in length and 1.6m to 1.7m in diameter and is to follow the existing canal where practically possible. The applicant is to register any portion of the portions of the canal servitude which is not registered. The servitudes for the pipeline will range between 35 and 75m during construction."

- 4.7.2 The first bullet point on page 7 of the EA, under the heading "The project components include the following", which reads

"A low level weir, abstraction works and 4 m³/s raw water pump station on the Berg River",

is replaced as follows:

"A low level weir abstraction works and 4-6 m³/s pump station on the Berg River."

4.7.3 Condition 38 of the EA is amended to read as follows:

"All areas affected by construction must be rehabilitated upon completion of the construction phase of the development to its pre-construction state where possible."

4.7.4 Condition 46 of the EA which reads *"Construction must take place during the dry season to reduce the erosion potential of the exposed surfaces."* is removed."



DR B E E MOLEWA, MP

MINISTER OF ENVIRONMENTAL AFFAIRS

DATE: 2018/02/23